

Sharayu Khot.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6458 OF 2013

Shri. Rajendra Tulshiram Birari & Ors. ...Petitioners

Versus

**The Assistant Director,
Town Plannin, Nashik Municipal
Corporation & Ors. ...Respondents**

Mr. M.M. Sathaye, for the Petitioners.

Ms. Chaitrali A. Deshmukh, for the Respondent Nos. 1 and 5.

Mr. Tushar N. Sonawane, for the Respondent No. 2.

Ms. R.A. Salunkhe, AGP, for the Respondent Nos. 3 and 4.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 9 April 2018

ORAL JUDGMENT : (Per A.S. Oka, J.)

1. Heard the learned Counsel appearing for the

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April 9, 2018

Petitioners, the learned Counsel appearing for the 2nd Respondent and the learned Counsel appearing for the 5th Respondent. The other Respondents are represented by learned AGP. Considering the narrow controversy involved in this Petition, the same is forthwith taken up for final disposal.

2. The challenge in this Petition is firstly to the communication dated 27 May 2013 issued by the 1st Respondent. By the said communication, the Application made by the Petitioners raising an objection to the sanction of Layout dated 12 June 2013 was rejected. The Layout was sanctioned by the 1st Respondent on the basis of the Application made by the 2nd Respondent.

3. By the order/communication dated 27 May 2013, which is impugned in this Petition, the prayer made by the Petitioners for cancelling approval granted to the Layout was declined by the 1st Respondent.

4. The dispute is about larger property bearing Survey No. 226 situated at Nashik. According to the case of the Petitioners, they are the purchasers of the land bearing Survey No. 226/1/1/2 admeasuring 40 Ares out of the larger property bearing Survey No. 226. The Petitioners are relying upon the decree passed in Special Civil Suit No. 22 of 1997 and order passed in Execution Application filed for execution of the said decree. On 10 March 2011, a Sale Deed was executed in favour of the Petitioners in respect of the said land admeasuring 40 Ares by the Court Commissioner appointed by the Executing Court. It is stated that on the basis of the registered Sale Deed executed by the Court Commissioner, the names of the Petitioners were mutated in the Revenue records.

5. At the instance of the 2nd Respondent, an Application was made to the Survey Officer under the Maharashtra Land Revenue Code, 1966 for Survey and measurement of the entire Survey No. 226. It is contended that the Survey was carried out without notice to the Petitioners and

therefore, the Sub-Division of the Survey No. 226 was not taken into consideration by the Survey Officer.

6. On the basis of the survey and measurement, the 2nd Respondent applied to the 1st Respondent for grant of provisional sanction to a Layout which was granted by the 1st Respondent.

7. Being aggrieved by the measurement carried out on the basis of the Application made by the 2nd Respondent, the Petitioners preferred an Appeal before the District Superintendent of the Land Records, Nashik. The Petitioners made an Application on 23 November 2011 to the 1st Respondent for cancelling an approval granted to the Layout dated 12 June 2013. The present Petition was filed in July 2013 for challenging the communication dated 27 May 2013. During the pendency of this Petition, the Appeal preferred by the Petitioners against the Survey was allowed by the Judgment and Order dated 30 July 2015 passed by the District Superintendent

of the Land Records, Nashik and the measurement plan dated 17 September 2009 was set aside. The order of the Appellate Authority has been bought on record by the Petitioners as well as the 3rd and 4th Respondents. It appears that on the basis of the said order, the Petitioners during the pendency of this Petition, on 2 December 2015 filed an Application dated 16 November 2015 to the 1st Respondent for cancelling the sanction of Layout dated 12 June 2013.

8. The learned Counsel appearing for the 2nd Respondent does not dispute that the measurement plan dated 17 September 2009 has been set aside by the First Appellate Authority. On instructions of the 2nd Respondent, he states that the 2nd Respondent intends to prefer an Appeal against the said decision of the First Appellate Authority.

9. The position as of today is that the Layout submitted by the 2nd Respondent was approved by the 1st Respondent on the basis of the measurement plan dated 17 September 2009

and as per the order of the District Superintendent of the Land Records, Nashik, the said measurement plan stands cancelled. Therefore, the Application made by the Petitioners on 23 November 2011 as well as the Application dated 16 November 2015 made by the Petitioners to the 1st Respondent will have to be reconsidered by the 1st Respondent. Therefore, the communication/order dated 27 May 2013 will have to be quashed and set aside and the 1st Respondent will have to be directed to pass a fresh order after hearing the parties.

10. Accordingly, we dispose of the Petition by passing the following order:-

- (i) The impugned communication/order dated 27 May 2013 issued by the 1st Respondent is hereby quashed and set aside and the Application dated 23 November 2011 is hereby restored;

(ii) The Application dated 23 November 2011 as well as the Application dated 16 November 2015 filed by the Petitioners shall be considered afresh by the 1st Respondent and decided in accordance with law as expeditiously as possible and in any event, within two months from the date on which this Judgment and Order is uploaded;

(iii) We direct the Petitioners and the 2nd Respondent to appear before the 1st Respondent on 17 May 2018 at 11.00 a.m. for fixing the schedule of hearing;

(iv) We accept the statement made by the learned Counsel appearing for the 2nd Respondent that the said Respondent proposes to challenge the order dated 30 July 2015 passed by the District Superintendent of the Land Records, Nashik by

preferring a second Appeal;

(v) All the contentions of the 2nd Respondent and the objections of the Petitioners to such an Appeal are expressly kept open;

(vi) The Writ Petition is disposed of in the above terms.

11. The learned Counsel appearing for the 2nd Respondent at this stage states that on the basis of the sanction of the Layout, the 2nd Respondent has created third party interests. The 2nd Respondent shall furnish to the 1st Respondent the names and the addresses of the persons in whose favour the third party interests have been created. The 1st Respondent shall also give an opportunity of being heard to the said third parties.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]